

No TDS on sum paid to foreign agent for rendering services outside India if it didn't have any PE in India

Summary – The High Court of Madras in a recent case of Fluidtherm Technology (P.) Ltd., (the Assessee) held that where assessee, engaged in business of strategic services, paid sales commission to non-resident agents for rendering services abroad, since said agents did not have PE in India, no taxable income accrued to them in India and, consequently, assessee was not required to deduct tax at source while making payments in question

Facts

- The assessee was doing business of strategic and consultancy services. During relevant year assessee paid sales commission to its non-resident agents.
- The Assessing Officer took a view that assessee was required to deduct tax at source under section 195 while making said payments. In view of assessee's failure to deduct tax at source, the Assessing Officer disallowed payments in question under section 40(a)(ia).
- The Commissioner (Appeals) noted that non-resident agent had rendered all services outside India and payments were also received outside India, having no PE or business connection in India and, thus, there was no reason to hold that the foreign agent had earned any taxable income in India out of the commission paid by the assessee. He thus deleted disallowance made by the Assessing Officer.
- The Tribunal upheld the order of the Assessing Officer.
- On revenue's appeal:

Held

- Following the order passed by the Court in case of *CIT v. Faizan Shoes (P.) Ltd.* [\[2014\] 367 ITR 155/226 Taxman 115/48 taxmann.com 48 \(Mad.\)](#) wherein similar issue was involved, it was to be held that impugned order passed by authorities below did not require any interference.